

Estate Planning Alert

NEW LAW PROVIDES DIRECTION REGARDING FEDERAL ESTATE AND GIFT TAX SYSTEM (SORT OF)

Over the last year we have contemplated sending out an alert to all of our clients regarding the status of our federal estate and gift tax system. We refrained from doing so until we had some clarity as to what the future holds. Due to the new tax legislation passed by Congress and signed into law by President Obama on December 17, 2010 (known as the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010), we now have some clarity as to what the future holds, at least for the next two years.

Key Provisions of the New Federal Law

1. For decedents dying after January 1, 2011, the estate tax exemption is \$5,000,000 per person (\$10,000,000 per couple).
2. The gift tax exemption will, for the first time in a decade, be unified with the estate tax exemption so that individuals can give away \$5,000,000 during their lifetime without owing any federal gift tax.
3. The maximum estate and gift tax rate is 35%.
4. All of a decedent's assets will receive a step up in basis to the asset's fair market value on the date of death.
5. For 2010 estates, there is a \$5,000,000 exemption, and the step up in basis rules will again apply unless the Executor expressly chooses to utilize the more limited and complicated rules that were only in effect during 2010 before the passage of this new law.
6. The generation skipping tax exemption (i.e., for gifts to grandchildren) is also reinstated at \$5,000,000.
7. There is a new portability concept in the law which allows a surviving spouse to inherit the unused estate tax exemption of a deceased spouse, potentially leaving the surviving spouse with a \$10,000,000 estate tax exemption.

8. Unless Congress changes the law, on January 1, 2013, this new law will expire and the estate, gift and generation skipping tax exemptions will revert back to \$1,000,000. There would also be no portability between spouses.

Connecticut Estate Tax Law

The Connecticut estate tax laws remain unchanged. Connecticut currently has a \$3,500,000 exemption from estate and gift taxes and no portability between spouses.

What Should You Do Now?

In light of the uncertainty as to what Congress may do in the next two years regarding the temporary estate tax system currently in effect, an estate plan which incorporates flexible provisions will ultimately provide the best solution.

These changes in the law also present an unprecedented two year opportunity to make gifts to children and grandchildren to take advantage of the new \$5,000,000 gift tax exemption and lower tax rates.

In sum, it is important to review all estate plans to be certain that state and federal gift, estate and income taxes are minimized while family protection goals are maximized, regardless of what Congress ultimately does.

To further discuss how these changes in the law specifically affect your estate plan, please contact your attorney at Levy & Droney or call the Asset Succession and Planning Department of Levy & Droney at 860-676-3000

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